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COMMISSION ON HUMAN RIGHTS
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Agenda item 10

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

Study of the issue of the privatization of prisons

Working paper submitted by the Secretary-General

Introduction

1. At its forty-third session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, after having examined the working paper (E/CN.4/Sub.2/1991/56) submitted by Mr. Miguel Alfonso Martínez on this issue pursuant to its decision 1989/110 of 1 September 1989, decided (decision 1991/105 of 28 August 1991), without a vote:

(a) To request Governments and intergovernmental and non-governmental organizations to submit their views on this matter to the Secretary-General, if possible not later than 10 April 1992;

(b) To request the Secretary-General to submit to the Sub-Commission at its forty-fourth session a working paper containing a systematic compilation of those views and analytical comments thereon;

(c) To consider the question of the privatization of prisons at its forty-fourth session under item 10 (a) of its provisional agenda.

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2. For the forthcoming session and pursuant to the relevant resolutions and decisions, the Secretary-General transmitted letters dated 15 November 1991, by which he requested information from all States, intergovernmental and non-governmental organizations. The table attached to the letters referred, inter alia, to the aforementioned decision 1991/105. Governments, intergovernmental and non-governmental organizations were requested to submit their views on this matter not later than 10 April 1992.

3. In view of the insufficient number of replies received, the Secretary-General sent a reminder dated 4 June 1992 by fax extending the deadline for receipt of information to 30 June 1992.

4. As at 4 August 1992, replies have been received from the Governments of Cuba, Egypt and Turkey. The Friends World Committee for Consultation has also sent a reply.

Comments and suggestions

5. In the view of Cuba, this complex subject, which involves private enterprise in activities recognized as lying strictly within the competence of the State, as is the case of activities resulting from decisions reached in the administration of justice including the management and supervision of the prison system, needs to be most carefully studied by all parties concerned.

6. Furthermore, Cuba noted that its Government considered the administration of justice to be a public function and therefore took the view that the operation and regulation of prison institutions and in general the control and observance of prison rules should be solely and exclusively the responsibility of the State and may not be delegated to private bodies or enterprises which may, in one form or another, affect or influence their functioning.

7. The Government of Egypt informed that the Prisons Regulatory Act No. 396 of 1956 contained the principles governing the establishment of modern prisons and their types (penitentiaries - public prisons - central prisons - special prisons). It further noted that the operation of prisons by private companies was precluded by many security-related and practical difficulties.

8. In view of the judiciary system and the administration system of prisons in practice in Turkey, the relevant Turkish authorities have pointed out that they do not contemplate, at this stage, privatizing prisons and that such a study is not being conducted at the Ministry of Justice.

9. The Friends World Committee for Consultation (Quakers) expressed the view that as many offenders as possible should be dealt with in the community; that prisons should be reserved for the most difficult and violent offenders; that these prisons should be organized and run on humane principles; and that prisoners should be housed in clean and decent surroundings.

10. Quakers noted that they were appalled by the present state of prisons in the United Kingdom - the overcrowding; the dilapidated condition of many buildings; the lack of integral sanitation in cells; the minimal exercise facilities; and the lack of productive work, vocational training and

rehabilitation. However, they were not convinced that privatization would be the answer, and they based their conclusion on the following arguments and principles:

"(a) The State Judiciary sentences offenders to prison and takes away their liberty. The State should therefore be directly responsible for what happens to them during the time they spend in custody;

(b) Privatization diverts attention from important aspects of the penal system - the pattern of sentencing, the need for new ideas and experimentation, and the need to work for basic improvements;

(c) We have not been impressed by Harmondsworth, the immigration detention centre in the United Kingdom which is run by a private security firm. The environment is spartan, the regime impoverished and there are no facilities for children;

(d) Privatization will allow Governments to wash their hands of this responsibility to some extent, and to be one step further removed from their direct responsibility to governmental institutions and the general public. We are not convinced that the proposed regulatory bodies will have sufficient power nor that there will be adequate accountability;

(e) We are concerned about the use of State-delegated force on offenders in privatized institutions in order to maintain control. Inevitably and regrettably, there will be at some time riots or other situations where physical force will be used to restore order. This is difficult enough to supervise and keep to a minimum in State-run institutions, it can only be more difficult in privatized prisons;

(f) The shocking state of our prisons is no reason for eschewing public responsibility for them".

11. At the same time, Quakers stated that they were not against privatization as such. In their view, various services to prisons and contracts to build them could be carried out on a private basis. They noted that there was much merit in having private individuals and organizations involved in visiting and taking part in prison activities and in contributing towards the design of building and educational courses. They favoured the involvement of private or voluntary bodies in dealing with offenders who received non-custodial sentences - and they actively encouraged this participation in the criminal justice system. However, they believed that the overall management and responsibility for custodial institutions should be directly in the hands of the State.

12. Cuba pointed out that the ultimate objective of any private enterprise was profit, and it was very difficult in such circumstances to ensure that the operation and regulation of the prison system could be appropriately secured. Further, if the State divested itself of those functions, it would need control mechanisms to verify that their social purposes were being met, thus preventing violations of the procedural guarantees and standards set forth in the regulations governing prison institutions in each country and at the international level. Account should also be taken of the fact that delegating

the responsibilities inherent in the administration of a prison to private individuals or enterprises provided the latter with extraordinary power to intervene in the life of prisoners, which in many cases may mean the indiscriminate exploitation of prison labour or systematic violations of the human rights of prisoners.

13. In the view of Quakers, the profit motive should not feature in the treatment of offenders because to maximize their profits, private prison owners needed to have full prisons. Privatization would create a lobby with a vested interest in a higher prison population. It was therefore possible that there would be pressure on the criminal justice system to provide more prisoners.

14. Cuba stated that the real problems that arose in many countries, such as high crime rates, overcrowding in prisons, inadequate facilities and the lack of public servants competent to perform the work involved did not constitute a sufficient reason to transfer responsibility for solving those problems to the private sector. It was up to the State to try to solve them and to seek appropriate ways of re-establishing the value and effectiveness of the public services. The privatization of prisons was a very important but very controversial subject; however, the advantages of private management over State management had not yet been proved, despite the various theories, criteria and practices put forward.

15. Cuba supported the opinion expressed by Mr. Miguel Alfonso Martínez in document E/CN.4/Sub.2/1991/56, that the action taken by the Sub-Commission should be aimed at reaching conclusions and recommendations on whether or not the privatization of prisons:

(a) Is an adequate solution for present-day problems faced by many States in connection with this specific aspect of the administration of justice;

(b) Provides adequate guarantees for ensuring the effective protection of the human rights of prisoners; and

(c) Constitutes a suitable tool for achieving the correctional, educational and rehabilitative purposes inherent in the administration of justice in any given society.

16. In view of the foregoing, the Government of Cuba considered that it would be highly beneficial to appoint a special rapporteur to study the question of the privatization of prisons in depth and that this responsibility should devolve upon a member of the Sub-Commission who could devote himself to such delicate investigations on a full-time basis. In addition, it would be advisable for the special rapporteur - if he were to be appointed - to submit a report for consideration by the Sub-Commission at its forty-sixth session.